FILE COPY

IN THE

Supreme Court of the United States

October Term, 1959

No. [redacted] 121

PAUL EGAN,

Petitioner,

vs.

CITY OF AURORA, a municipality under the laws of the State of Illinois, LEO BOUCON, WILLIAM G. KONRAD, H. A. WYETH, SR., WILLIAM B. ROBERTSON, DONALD CURRAN, HERSHELL STOVER, LeROY STROUD, ANTHONY RUKAS, JOHN (JACK) PFIEFER, RAY SCHUHOW, JOHN DAY and CHARLES DARLING,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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INDEX

	PAGE
Statement of the Case	1
Argument	2
Conclusion	7

Table of Citations

Cases

Agnew v. *City of Compton*, 239 F. 2d 226	3
Burt v. *City of New York, et al.*, 156 F. 2d 791 (C.A. 2, 1946)	3
Charlton v. *City of Hialeah*, 188 F. 2d 421	3
Cobb v. *City of Malden*, 202 F. 2d 701	3
Collins v. *Hardyman*, 341 U.S. 651	4, 6
Cuiska v. *City of Mansfield*, 250 F. 2d 701	3
Davis v. *Forman*, 251 F. 2d 421	6
Eaton v. *Bibb*, 217 F. 2d 446	4
Geach v. *Moynahan*, 207 F. 2d 714	4, 6
Miles v. *Armstrong*, 207 F. 2d 234	6
Monroe v. *Pape, et al.*, 272 F. 2d 365	7
Nelson v. *Knox*, 256 F. 2d 312, 315	4
Ortega v. *Ragen*, 216 F. 2d 56[illegible] at p. 563	4, 6
Picking v. *Pennsylvania R. Co., et al.*, 151 F. 2d 240 (C.A. 3, 1945)	3
Screws v. *U. S.*, 325 U.S. 91 at pp. 108-109	6
The Slaughter House Cases, 16 Wall. 36 (1873)	6
Smith v. *Jennings*, 148 F. Supp. 641	6
Snowden v. *Hughes*, 321 U.S. 1	6
Spampinato v. *M. Breger and Co.*, 166 F. Supp. 33	6
Stift v. *Lynch*, 267 F. 2d 237, 239	
Tenney v. *Brandhove*, 341 U.S. 367, 71 S. Ct. 783	4
U. S. v. *Cruikshank*, 92 U.S.C. Sec. 47(3)	4
U. S. v. *Ragen*, 237 F. 2d 953	6
Wakat v. *Harlib*, 253 F. 2d 59	4

Commentators

"The Doctrine of Official Immunity under the Civil Rights Acts", 68 Harv. Law Review 1229, 1231-2 (1955) 5

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CITY OF AURORA, a municipality under the laws of the State of Illinois, LEO BOUCON, WILLIAM G. KONRAD, H. A. WYETH, SR., WILLIAM B. ROBERTSON, DONALD CURRAN, HERSHELL STOVER, LeROY STROUD, ANTHONY RUKAS, JOHN (JACK) PFIEFER, RAY SCHUHOW, JOHN DAY and CHARLES DARLING,

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STATEMENT OF THE CASE

The Petitioner's Statement of the Case is incomplete in the following important respects:

1. There is no allegation that any of Petitioner Egan's individual rights were or have been in jeopardy. Egan alleges solely that he was conducting the meeting in question

in his "official capacity as Mayor of the City of Aurora, Illinois".

2. Defendants' Affidavit in Support of Defendants' Motion To Dismiss stood undenied as to the following important items:

(a). That the real purpose for which the meeting of October 14, 1958 was called by Petitioner Egan was to attempt to overthrow by the use of arms and force, the duly constituted police department of the City of Aurora, and

(b). That Petitioner Egan at and just prior to the time of his alleged arrest was attempting the invasion and capture of the duly constituted police department of the City of Aurora by inciting persons within the crowd.

(c). That the meeting in question was attended by a packed crowd in chambers where in the event of a disturbance which was clearly and presently threatened by the actions of plaintiff, the means of exit were such as would have exposed the general public to serious threat of injury and loss of life.

ARGUMENT

This Court should clearly deny the Writ of Certiorari.

Petitioner Egan seeks to abolish the long line of decided cases granting official immunity under the Federal Civil Rights Acts: He would also induce this Court to extend the protection of the Civil Rights Acts to the wholly treacherous ground of relationships between one state official and another. Petitioner cites no warrant in law for so overruling or extending as pointed out below. Reason and authority support the conclusion that the Petition for the Writ of Certiorari should be denied.

I.

Official immunity under the Civil Rights Acts is a settled doctrine well founded in law and in common sense.

Petitioner admits that the Courts of Appeal have held in many cases that certain state officers and officials are immune from liability under the Civil Rights Acts (Petition p. 9).

We remind the Court that the only decisions to the contrary cited by Petitioner are *Burt* v. *City of New York, et al.*, 156 F. 2d 791 (C.A. 2, 1946) and *Picking* v. *Pennsylvania R. Co., et al.*, 151 F. 2d 240 (C.A. 3, 1945). These two cases are each distinguishable on their facts from the case at bar.

Petitioner asserts on the slender basis of the above two cases that there exists a conflict of decision between Circuits. Petitioner ignores the fact that the overwhelming weight of authority is in accordance with a restricted application of the Civil Rights Acts, and that the Circuit Courts of Appeal have repeatedly held that defendants similarly situated to the defendants in the case at bar are immune from any liability to the Plaintiff under the Civil Rights Acts.

Thus it has been repeatedly held that a municipal corporation, such as the City of Aurora is immune from any liability to an individual plaintiff under the Civil Rights Acts. *Ciuska* v. *City of Mansfield*, 250 F. 2d 701; *Charlton* v. *City of Hialeah*, 188 F. 2d 421; *Cobb* v. *City of Malden*, 202 F. 2d 701; *Agnew* v. *City of Compton*, 239 F. 2d 226.

As legislators and individuals in which capacities they were sued, the defendant City Commissioners Boucon, Konrad, Wyeth and Robertson are also immune from the suit under the Civil Rights Acts under a long line of decisional

law. *Tenney* v. *Brandhove*, 341 U.S. 367, 71 S. Ct. 783; *Nelson* v. *Knox*, 256 F. 2d 312, 315; *Ortega* v. *Ragen*, 216 F. 2d 561 at p. 563.

Certainly none of the defendants as individuals are liable to the plaintiff, for the purpose of the Civil Rights Acts is to affect State conduct. *Collins* v. *Hardyman*, 341 U.S. 651; *U. S.* v. *Cruikshank*, 92 U.S.C. Sec. 47(3).

Finally the cases hold that the defendant Charles Darling as City Attorney, and the defendant Policemen, Curran, Stover, Stroud, Rukas, Pfiefer, Schuhow and Day are also immune from suit. *Stift* v. *Lynch*, 267 F. 2d 237, 239; *Eaton* v. *Bibb*, 217 F. 2d 446.

Against this weight of authority, the Petitioner tries to elicit a "conflict" between the Circuits on the basis of *Burt* and *Picking, supra*. One swallow does not make a summer. Two cases out of the many cited above do not make a conflict between the Circuits such as would justify this Court in considering in essence what it has already considered and decided in *Tenney* v. *Brandhove*, 341 U.S. 367.

The asserted differing holdings of the various Circuits—from which Petitioner would have this Court believe that the various Circuits are at war within themselves—involve Petitioner's blithe disregard of the differing fact and pleading situations that were before the courts concerned in the individual cases.

Because the Seventh Circuit in *Veach* v. *Moynahan*, 2[illegible] F. 2d 714, upheld one Complaint involving one fact situation and in another case affirmed a judgment for the victim of a cruel beating, *Wakat* v. *Harlib*, 253 F. 2d 59, does not permit the conclusion that all of the decisions of the Seventh Circuit must be uniform no matter what the fact situation or pleading before the Court was or might be.

The decisions granting official immunity in the case at bar

and in the overwhelming number of cases dealing with similar fact situations are based upon reasons founded in the thoughtful appreciation of many factors. Thus imposition of blanket liability, under the Civil Rights Acts would result in undue Federal supervision over State action, would ignore the traditional reasons for granting immunity to the type of officer involved, would finally ignore the basic historical purpose of the Civil Rights Acts. Note: "The Doctrine of Official Immunity under the Civil Rights Acts", 68 Harv. Law Review 1229-1231-2 (1955).

It was out of respect for these reasons as well as with reference to the well established precedent that the Seventh Circuit affirmed the judgment dismissing the Petitioner's Complaint.

II.

The Civil Rights Acts should not be extended to interfere with internal state subdivision government.

The Courts have repeatedly held that plaintiff *as an individual* would have no justifiable rights under the Civil Rights Acts against governmental bodies or officials similar to defendants in cases similar to or identical to the case at bar.

Nevertheless, Petitioner Egan here asserts that he has Federally protected rights "in his official capacity as Mayor of the City of Aurora" against other city officials which he does not have as an individual.

Petitioner thus seeks the protection of the Federal Civil Rights Acts, in conducting a political office of a municipal corporation of the State of Illinois, against the acts of *other* municipal officials!

For reasons going to the heart of our Federal system, no court has ever held that a Federal Statute can be invoked to protect one State political officer as against the

complaint that another State officer is impinging on a State given right. Petitioner's rights as the Mayor of the City of Aurora arise only from and under the laws of the State of Illinois, and are not entitled to protection of the Federal Civil Rights Acts. To apply the Civil Rights Acts would be to inject the Federal Government into relationships between State officials and would destroy the substance of the Federal system. In *Screws* v. *U. S.*, 325 U.S. 91 at pp. 108, 109, the Supreme Court stated:

> "We agree that when this statute is applied to the action of state officials, it should be construed so as to respect the proper balance between the States and the federal government in law enforcement. Violation of local law does not necessarily mean that federal rights have been invaded. The fact that a prisoner is assaulted, injured, or even murdered by state officials does not necessarily mean that he is deprived of any right protected or secured by the Constitution or laws of the United States. * * * The Fourteenth Amendment did not alter the basic relations between the States and the national government. * * * Our national government is one of delegated powers alone."

To the same effect are other cases decided by this Court and the various Circuit Courts of Appeals. *Davis* v. *Forman*, 251 F. 2d 421; *U. S.* v. *Ragen*, 237 F. 2d 953; *Ortega* v. *Ragen*, 216 F. 2d 561; *Geach* v. *Moynahan*, 207 F. 2d 714; *Miles* v. *Armstrong*, 207 F. 2d 234. Also see *Collins* v. *Hardyman*, 341 U.S. 651; *Snowden* v. *Hughes*, 321 U.S. 1; *Spampinato* v. *M. Breger and Co.*, 166 F. Supp. 33; *Smith* v. *Jennings*, 148 F. Supp. 641.

This principle is not new. It dates from *The Slaughter House Cases*, 16 Wall. 36 (1873). It is as valid now as it was then.

CONCLUSION

The decision of the Seventh Circuit is sound, well documented and in accordance with consistent authority and important principles vital to the maintenance of the Federal system. *Monroe* v. *Pape, et al.*, 272 F. 2d 365, in which this Court has granted a Writ of Certiorari is a case wholly different and distinct from the case at bar. As the Seventh Circuit pointed out, in *Monroe* v. *Pape* was involved "gross misconduct"; a series of unjustifiable batteries, unreasonable search and seizure, and long and inherently coercive unjustifiable secret detention. None of these are involved in the case at bar. The issues of *Monroe* are totally different from the issues in the case at bar. The case at bar was rightly decided and no purpose would be served by granting the Writ other than to further the Petitioner Egan's desire for publicity.

For the reasons stated above, the Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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